

Letter of Findings Number: 01-20120230
Income Tax
For the Tax Years 2005-06

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ISSUE

I. Income Tax – Collection Fees.

Authority: IC § 6-8.1-8-2; IC § 6-8.1-8-4

Taxpayer protests the denial of a claim for refund of collection fees.

STATEMENT OF FACTS

Taxpayer is an Indiana resident. As the result of collection activities, the Indiana Department of Revenue ("Department") employed a third-party collection agency to collect amounts which had been determined that Taxpayer owed in income tax to Indiana. After that amount was collected from Taxpayer's bank account, Taxpayer filed a claim for refund of the amounts removed from his bank account. The Department refunded those amounts, including some federal refund offsets which were applied to both years in question after the billings were canceled, minus collection fees which the Department incurred as a result of hiring the third-party collection agency. Taxpayer protests the denial of refund of those collections fees. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax – Collection Fees.

DISCUSSION

Taxpayer protests the Department's denial of a portion of its claim for refund of collection fees for the tax years 2005 and 2006. The Department found that Taxpayer had not filed Indiana income tax returns for 2005 and 2006 and prepared returns based on a federal audit. The Department had requested copies of those returns from Taxpayer prior to this, but received no response. The Department sent proposed assessments, demand notices to Taxpayer but received no response. The matter was then turned over to the third-party collection agency. A few days later, Taxpayer responded to the Department's inquiries, but the collection agency had already taken action.

Taxpayer and Department personnel worked together to resolve the situation. Ultimately, the Department was convinced that Taxpayer did not owe the taxes at issue and refunded the funds removed from Taxpayer's bank account, minus the amounts of collection fees.

IC § 6-8.1-8-2(b) states:

If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.

When the department issues a tax warrant, a collection fee of ten percent (10[percent]) of the unpaid tax is added to the total amount due. (Emphasis added).

Also, as provided by IC § 6-8.1-8-4:

(a) When the department collects a judgment arising from a tax warrant, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

(Emphasis added).

The Department is therefore authorized to employ a collection agency to collect a debt arising from a tax warrant.

While Taxpayer has established that the base tax was not due, it also remains that he missed the deadline for response to the demand notice. Due to this missed deadline, the Department incurred collection fees which it

would not have incurred with a timely response and explanation. Therefore, the Department is correct to retain an amount equal to the collection fees it incurred.

FINDING

Taxpayer's protest is denied regarding collection fees.

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